

AMENDED IN SENATE AUGUST 22, 2006

AMENDED IN SENATE AUGUST 8, 2006

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2781**

---

### **Introduced by Assembly Member Leno**

February 24, 2006

---

An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2781, as amended, Leno. Child support collectors.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or an earnings assignment order.

This bill would enact provisions regulating the activities of private child support collectors, as defined. Among other things, the bill would require a private child support collector to provide specified notices and disclosures to the child support obligee in a written contract and additional information about child support payments during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act. The bill would also require that every court order for child support issued on or

after January 1, ~~2008~~ 2010, and every child support agreement providing for the payment of child support approved by the court on or after January 1, ~~2008~~ 2010, include a separate money judgment owed by the child support obligor to pay the fee charged by a private child support collector, as specified. This money judgment would be in favor of the private child support collector and the child support obligee, jointly, *as specified*. The bill would also establish requirements relating to the compensation of attorneys who are private child support collectors.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 9 (commencing with Section 5610) is  
2     added to Part 5 of Division 9 of the Family Code, to read:

3  
4             CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS  
5

6     5610. For the purposes of this chapter, “private child support  
7     collector” means any individual, corporation, attorney, nonprofit  
8     organization, or other nongovernmental entity who is engaged by  
9     an obligee to collect child support ordered by a court or other  
10    tribunal for a fee or other consideration. The term does not  
11    include any attorney who addresses issues of ongoing child  
12    support or child support arrearages in the course of an action to  
13    establish parentage or a child support obligation, a proceeding  
14    under Division 10 (commencing with Section 6200), a  
15    proceeding for dissolution of marriage, legal separation, or  
16    nullity of marriage, or in ~~post-judgment~~ *postjudgment* or  
17    modification proceedings related to any of those actions. A  
18    “private child support collector” includes any private,  
19    nongovernmental attorney whose business is substantially  
20    comprised of the collection or enforcement of child support. As  
21    used in this section, substantially means that at least 50 percent  
22    of the attorney’s business, either in terms of remuneration or time  
23    spent, is comprised of the activity of seeking to collect or enforce  
24    child support obligations for other individuals.

25    5611. (a) Any contract for the collection of child support  
26    between a private child support collector and an obligee shall be

1 in writing and written in simple language, in at least 10-point  
2 type, signed by the private child support collector and the  
3 obligee. The contract shall be delivered to the obligee in a paper  
4 form that the obligee may retain for his or her records. The  
5 contract shall include all of the following:

6 (1) An explanation of the fees imposed by contract and  
7 otherwise permitted by law and an example of how they are  
8 calculated and deducted.

9 (2) A statement that the amount of fees to be charged is set by  
10 the agency and is not set by state law.

11 (3) A statement that the private child support collector cannot  
12 charge fees on current support if the obligee received any current  
13 child support during the 6 months preceding execution of the  
14 contract with the private collector.

15 (4) An explanation of the nature of the services to be provided.

16 (5) The expected duration of the contract, stated as a length of  
17 time or as an amount to be collected by the collection agency.

18 (6) An explanation of the opportunities available to the obligee  
19 or private child support collector to cancel the contract or other  
20 conditions under which the contract terminates.

21 (7) The mailing address, street address, telephone numbers,  
22 facsimile numbers, and Internet address or location of the private  
23 child support collector.

24 (8) A statement that the private child support collector is not a  
25 ~~government~~ *governmental* entity and that—~~government~~  
26 *governmental* entities in California provide child support  
27 collection and enforcement services free of charge.

28 (9) A statement that the private child support collector collects  
29 only money owed to the obligee and not support assigned to the  
30 state or county due to the receipt of CalWORKs or Temporary  
31 Assistance to Needy Families.

32 (10) A statement that the private child support collector will  
33 not retain fees from collections that are primarily attributable to  
34 the actions of a ~~government~~ *governmental* entity or any other  
35 person or entity and is required by law to refund any fees  
36 improperly retained.

37 (11) A statement that the obligee may continue to receive, or  
38 may pursue, services through a ~~government~~ *governmental* entity  
39 to collect support, and the private child support collection agency

1 will not require or request that the obligee cease or refrain from  
2 engaging those services.

3 (12) A notice that the private child support collector is  
4 required to keep and maintain case records for a period of four  
5 years and four months, after the expiration of the contract and  
6 may thereafter destroy or otherwise dispose of the records. The  
7 obligee may, prior to destruction or disposal, retrieve those  
8 portions of the records that are not confidential.

9 (13) A “Notice of Cancellation,” which shall be included with  
10 the contract and which shall contain, in the same size font as the  
11 contract, the following statement, written in the same language as  
12 the contract:

13  
14 “Notice of Cancellation

15 You may cancel this contract, without any penalty or obligation, within 15  
16 business days from the date the contract is signed or you receive this notice,  
17 whichever is later, or at any time if the private child support collector  
18 commits a material breach of any provision of the contract or a material  
19 violation of any provision of this chapter with respect to the obligee or the  
20 obligor, or \_\_\_\_\_ (all other reasons for  
21 cancellation permitted).

22 To cancel this contract, mail or deliver a signed copy of this cancellation  
23 notice or any other written notice to \_\_\_\_\_ (name of  
24 private child support collector) at

25 \_\_\_\_\_ (address for mail or  
26 delivery) no later than midnight on \_\_\_\_\_ (date).

27 I am canceling this contract, \_\_\_\_\_ (date)

28 \_\_\_\_\_ (signature)”  
29

30 (14) The following statement by the obligee on the first page  
31 of the contract:

32 “I understand that this contract calls for (name of private child  
33 support collector) to collect money owed to me, and not money  
34 owed to the state or county. If child support is owed to the state  
35 or county because I am receiving or have received program  
36 benefits from CalWORKs or Temporary Assistance to Needy  
37 Families, then (name of private child support collector) cannot  
38 collect that money for me. If I start to receive program benefits  
39 from CalWORKs or Temporary Assistance to Needy Families

1 during this contract, I must notify (name of private child support  
2 collector) in writing.”

3 “I declare by my signature below that the child support to be  
4 collected for me pursuant to this contract is not assigned to the  
5 state or county as of the time I sign this contract. I agree that I  
6 will give written notice to the private child support collector if I  
7 apply for program benefits under CalWORKs or Temporary  
8 Assistance to Needy Families during the term of this contract.”

9 (15) (A) The following statement by the obligee immediately  
10 above the signature line of the contract:

11 “I understand that (name of private child support collector) will  
12 charge a fee for all the current child support and arrears it  
13 collects for me until the entire contract amount is collected or the  
14 contract terminates for another reason. I also understand that  
15 depending on the frequency and size of payments, it could take  
16 years for the amount specified in my contract to be collected.  
17 This means that if (name of private child support collector) is  
18 collecting my current support by wage withholding or other  
19 means, I will not receive the full amount of my periodic  
20 court-ordered current support until the contract terminates since  
21 (name of private child support collector) will be deducting its fee  
22 from the periodic court-ordered current support it collects for  
23 me.”

24 (B) The statement required by subparagraph (A) shall:

25 (i) Be in a type size that is at least equal to one-quarter of the  
26 largest type size used in the contract. In no event shall the  
27 disclosure be printed in less than 8-point type.

28 (ii) Be in a contrasting style, and contrasting color or bold  
29 type, which is equally or more visible than the type used in the  
30 contract.

31 (b) The disclosures required by paragraph (1) of subdivision  
32 (a) of Section 5612 shall be printed in the contract, as follows:

33 (1) In a type size that is at least equal to one-quarter of the  
34 largest type size used in the contract. In no event shall the  
35 disclosure be printed in less than 8-point type.

36 (2) In a contrasting style, and contrasting color or bold type  
37 that is equally or more visible than the type used in the contract.

38 (3) Immediately above, below, or beside the stated fee without  
39 any intervening words, pictures, marks, or symbols.

40 (4) In the same language as the contract.

1     5612. (a) Each private child support collector:

2     (1) That charges any initial fee, processing fee, application fee,  
3     filing fee, or other fee or assessment that must be paid by an  
4     obligee regardless of whether any child support collection is  
5     made on behalf of the obligee shall make the following  
6     disclosure in every radio, television, or print advertisement  
7     intended for a target audience consisting primarily of California  
8     residents:

9     “(Name of private child support collector) is not a  
10    governmental entity and charges an upfront fee for its services  
11    even if it does not collect anything.”

12    (2) That does not charge any fee or assessment specified in  
13    paragraph (1) shall make the following disclosure in every radio,  
14    television, or print advertisement aired for a target audience  
15    consisting primarily of California residents:

16    “(Name of private child support collector) is not a  
17    governmental entity and charges a fee for its services.”

18    (b) The disclosures required in subdivision (a) shall also be  
19    stated during the first 30 seconds of any initial telephone  
20    conversation with an obligee and in the private child support  
21    collector’s contract.

22    5613. (a) An obligee shall have the right to cancel a contract  
23    with a private support collector under either of the following  
24    circumstances:

25    (1) Within 15 business days of the later of signing the contract,  
26    or receiving a blank notice of cancellation form, or at any time if  
27    the private child support collector commits a material breach of  
28    any provision of the contract or a material violation of any  
29    provision of this chapter with respect to the obligee or the  
30    obligor.

31    (2) At the end of any 12-month period in which the total  
32    amount collected by the private child support collector is less  
33    than 50 percent of the amount scheduled to be paid under a  
34    payment plan.

35    (b) A contract shall automatically terminate when the contract  
36    term has expired or the contract amount has been collected,  
37    whichever occurs first.

38    5614. (a) A private child support collector shall do all of the  
39    following:

40    (1) (A) Provide to an obligee all of the following information:

1 (i) The name of, and any other identifying information relating  
2 to, any obligor who made child support payments collected by  
3 the private child support collector.

4 (ii) The amount of support collected by the private child  
5 support collector.

6 (iii) The date on which each amount was received by the  
7 private child support collector.

8 (iv) The date on which each amount received by the private  
9 child support collector was sent to the obligee.

10 (v) The amount of the payment sent to the obligee.

11 (vi) The source of payment of support collected and the  
12 actions affirmatively taken by the private child support collector  
13 that resulted in the payment.

14 (vii) The amount and percentage of each payment kept by the  
15 private child support collector as its fee.

16 (B) The information required by paragraph (A) shall ~~either~~ be  
17 made available, at the option of the obligee, by mail, telephone,  
18 or via secure Internet access. If provided by mail, the notice shall  
19 be sent at least quarterly and, if provided by any other method,  
20 the information shall be updated and made available at least  
21 monthly. Information accessed by telephone and the Internet  
22 shall be up to date.

23 (2) Establish a direct deposit account with the state  
24 disbursement unit and shall within two business days from the  
25 date the funds are dispersed from the state disbursement unit to  
26 the private child support collector, if a portion of the funds  
27 constitute an obligor's fee, notify the Department of Child  
28 Support Services of the portion of each collection that constitutes  
29 a fee. The notification shall be sent by the private child support  
30 collector to the department in an electronic format to be  
31 determined by the department.

32 (3) Maintain records of all child support collections made on  
33 behalf of a client who is an obligee. The records required under  
34 this section shall be maintained by the private child support  
35 collector for the duration of the contract plus a period of four  
36 years and four months from the date of the last child support  
37 payment collected by the private child support collector on behalf  
38 of an obligee. In addition to information required by paragraph  
39 (1) ~~of subdivision (a)~~, the private child support collector shall  
40 maintain the following:

1 (A) A copy of the order establishing the child support  
2 obligation under which a collection was made by the private  
3 child support collector.

4 (B) Records of all correspondence between the private child  
5 support collector and the obligee or obligor in a case.

6 (C) Any other pertinent information relating to the child  
7 support obligation, including any case, cause, or docket number  
8 of the court having jurisdiction over the matter and official  
9 government payment records obtained by the private child  
10 support collector on behalf of, and at the request of, the obligee.

11 (4) Safeguard case records in a manner reasonably expected to  
12 prevent intentional or accidental disclosure of confidential  
13 information pertaining to the obligee or obligor, including  
14 providing necessary protections for records maintained in an  
15 automated system.

16 (5) Ensure that every person who contracts with a private child  
17 support collector has the right to review all files and documents,  
18 both paper and electronic, in the possession of the private child  
19 support collector for the information specified in this paragraph  
20 regarding that obligee's case that are not required by law to be  
21 kept confidential. The obligee, during regular business hours,  
22 shall be provided reasonable access to and copies of the files and  
23 records of the private child support collector regarding all  
24 moneys received, collection attempts made, fees retained or paid  
25 to the private child support collector, and moneys disbursed to  
26 the obligee. The private child support collector may not charge a  
27 fee for access to the files and records, but may require the obligee  
28 to pay up to three cents (\$0.03) per page for the copies prior to  
29 their release.

30 (6) Provide, prior to commencing collection activities, written  
31 notice of any contract with an ~~obligor~~ *obligee* to the local child  
32 support agency that is enforcing the obligee's support order, if  
33 known, or the local child support agency for the county in which  
34 the obligee resides as of the time the contract is signed by the  
35 obligee. The notice shall identify the obligee, the obligor, and the  
36 amount of the arrearage claimed by the obligee.

37 (b) A private child support collector shall not do any of the  
38 following:

39 (1) Charge fees on current support if the obligee received any  
40 current child support during the six months preceding execution



1 of the contract with the private child support collector. A private  
2 child support collector shall inquire of the obligee and record the  
3 month and year of the last current support payment and may rely  
4 on information provided by the obligee in determining whether a  
5 fee may be charged on current support.

6 (2) Improperly retain fees from collections that are primarily  
7 attributable to the actions of a ~~government~~ *governmental* entity.  
8 The private child support collector shall refund all of those fees  
9 to the obligee immediately upon discovery or notice of the  
10 improper retention of fees.

11 (3) Collect or attempt to collect child support by means of any  
12 conduct that is prohibited of a debt collector collecting a  
13 consumer debt under Sections 1788.10 to 1788.16, inclusive, of  
14 the Civil Code. This chapter does not modify, alter, or amend the  
15 definition of a debt or a debt collector under the Rosenthal Fair  
16 Debt Collection Practices Act, Title 1.6C (commencing with  
17 Section 1788) of Part 4 of Division 3 of the Civil Code.

18 (4) Misstate the amount of the fee that may be lawfully paid to  
19 the private child support collector for the performance of the  
20 contract or the identity of the person who is obligated to pay that  
21 fee.

22 (5) Make a false representation of the amount of child support  
23 to be collected. A private child support collector is not in  
24 violation of this paragraph if it reasonably relied on sufficient  
25 documentation provided by the government entity collecting  
26 child support, a court with jurisdiction over the support  
27 obligation, or from the obligee, or upon sufficient documentation  
28 provided by the obligor.

29 (6) Ask any party other than the obligor to pay the child  
30 support obligation, unless that party is legally responsible for the  
31 obligation or is the legal representative of the obligor.

32 (7) Require, on or after January 1, 2007, as a condition of  
33 providing services to the obligee, that the obligee waive any right  
34 or procedure provided for in any state law regarding the right to  
35 file and pursue a civil action, or that the obligee agree to resolve  
36 disputes in a jurisdiction outside of California or to the  
37 application of laws other than those of California, as provided by  
38 law. Any waiver by the obligee of the right to file and pursue a  
39 civil action, the right to file and pursue a civil action in  
40 California, or the right to rely upon California law as provided by

1 law must be knowing, voluntary, and not made a condition of  
2 doing business with the private child support collector. Any  
3 waiver, including, but not limited to, an agreement to arbitrate or  
4 regarding choice of forum or choice of law, that is required as a  
5 condition of doing business with the private child support  
6 collector, shall be presumed involuntary, unconscionable, against  
7 public policy, and unenforceable. The private child support  
8 collector has the burden of proving that any waiver of rights,  
9 including any agreement to arbitrate a claim or regarding choice  
10 of forum or choice of law, was knowing, voluntary, and not made  
11 a condition of the contract with the obligee.

12 5615. (a) (1) A person may bring an action for actual  
13 damages incurred as a result of a violation of this chapter.

14 (2) In addition to actual damages, a private child support  
15 collector who willfully and knowingly violates the provisions of  
16 this chapter shall be liable for a civil penalty in an amount  
17 determined by the court, which may not be less than one hundred  
18 dollars (\$100) nor more than one thousand dollars (\$1,000).

19 (3) (A) The prevailing party in any action pursuant to this  
20 chapter shall be entitled to recover the costs of the action.  
21 Reasonable attorney's fees, which shall be based on the time  
22 necessarily expended to enforce the liability, shall be awarded to  
23 a prevailing party, other than the private child support collector,  
24 asserting rights under this chapter. Reasonable attorney's fees  
25 may be awarded to a prevailing private child support collector if  
26 the court finds that the party bringing the action did not prosecute  
27 the action in good faith.

28 (B) In an action by an obligor under this chapter, the private  
29 child support collector shall have no civil liability under this  
30 chapter to the obligor under any circumstance in which a debt  
31 collector would not have civil liability under Section 1788.30 of  
32 the Civil Code.

33 (4) A private child support collector is not in violation of this  
34 chapter if the private child support collector shows, by a  
35 preponderance of the evidence, that the action complained of was  
36 not intentional and resulted from a bona fide error that occurred  
37 notwithstanding the use of reasonable procedures to avoid the  
38 error.

1 (5) The remedies provided in this section are cumulative and  
2 are in addition to any other procedures, rights, or remedies  
3 available under any other law.

4 (b) Any waiver of the rights, requirements, and remedies  
5 provided by this chapter violates public policy and is void.

6 (c) Notwithstanding any other provision of this chapter,  
7 including provisions establishing a right of cancellation and  
8 requiring notice thereof, any contract for the collection of child  
9 support between an attorney who is a “private child support  
10 collector” pursuant to Section 5610 shall conform to the statutes,  
11 rules, and case law governing attorney conduct, including the  
12 provisions of law providing that a contract with an attorney is  
13 cancelable by the attorney’s client at any time. Upon cancellation  
14 of that contract, the attorney may seek compensation as provided  
15 by law, including, if applicable, a claim for the reasonable value  
16 of any services rendered to the attorney’s client pursuant to the  
17 doctrine of quantum meruit, provided those services lead to the  
18 collection of support and the compensation is limited to what  
19 would have been collected had the contract been in effect. To the  
20 extent that the provisions of this chapter are in conflict with the  
21 provisions of state law governing the conduct of attorneys, this  
22 chapter shall control. If there is no conflict, an attorney who is a  
23 “private child support collector” pursuant to Section 5610 shall  
24 conform to the provisions of this chapter.

25 5616. (a) Every court order for child support issued on or  
26 after January 1, ~~2008~~ 2010, and every child support agreement  
27 providing for the payment of child support approved by a court  
28 on or after January 1, ~~2008~~ 2010, shall include a separate money  
29 judgment owed by the child support obligor to pay a fee not to  
30 exceed 33 and  $\frac{1}{3}$  percent of the total amount in arrears, *and not*  
31 *to exceed 50 percent of the fee* as charged by a private child  
32 support collector pursuant to a contract complying with the  
33 requirements of this chapter and any other child support  
34 collections costs expressly permitted by the child support order  
35 *for the collection efforts undertaken by the private child support*  
36 *collector*. The money judgment shall be in favor of the private  
37 child support collector and the child support obligee, jointly, *but*  
38 *shall not constitute a private child support collector lien on real*  
39 *property unless an abstract of judgment is recorded pursuant to*  
40 *subdivision (d)*. Except as provided in subdivision (c), the money

1 judgement may be enforced by the private child support collector  
2 by any means available to the obligee for the enforcement of the  
3 child support order without any additional action or order by the  
4 court. Nothing in this chapter shall be construed to grant the  
5 private child support collector any enforcement remedies beyond  
6 those authorized by federal or state law. Any fee collected from  
7 the obligor pursuant to a contract complying with the  
8 requirements of this chapter, shall not constitute child support.

9 (b) If the child support order makes the obligor responsible for  
10 payment of collection fees and costs, fees that are deducted by a  
11 private child support collector may not be credited against child  
12 support arrearages or interest owing on arrearages or any other  
13 money owed by the obligor to the obligee.

14 (c) If the order for child support requires payment of collection  
15 fees and costs by the obligor, then not later than five days after  
16 the date that the private child support collector makes its first  
17 collection, written notice shall be provided to the obligor of (1)  
18 the amount of arrearages subject to collection, (2) the amount of  
19 the collection that shall be applied to the arrearage, and (3) the  
20 amount of the collection that shall be applied to the fees and  
21 costs of collection. The notice shall provide that, in addition to  
22 any other procedures available, the obligor has 30 days to file a  
23 motion to contest the amount of collection fees and costs  
24 assessed against the obligor.

25 (d) Any fees or monetary obligations resulting from the  
26 contract between an obligee parent and a private child support  
27 collector, or moneys owed to a private child support collector by  
28 the obligor parent or obligee parent as a result of the private child  
29 support collector's efforts, does not, ~~without further action,~~ create  
30 a lien on real property, *unless an abstract of judgment is obtained*  
31 *from the court and recorded by the private child support*  
32 *collector against the real property in the county in which it is*  
33 *located,* nor shall that amount be added to any existing lien  
34 created by a recorded abstract of support or be added to an  
35 obligation on any abstract of judgment. ~~Nothing contained~~  
36 ~~herein, however, shall prevent a private child support collector~~  
37 ~~from collecting fees it is owed by obtaining and recording a new~~  
38 ~~judgment lien as otherwise authorized by law. A private child~~  
39 ~~support collector lien shall have the force, effect, and priority of~~  
40 ~~a judgment lien.~~

1 (e) An assignment to a private child support collector is a  
2 voluntary assignment for the purpose of collecting the domestic  
3 support obligation as defined in Section 101 of Title 11 of the  
4 United States Bankruptcy Code (11 U.S.C. Section 101 (14 A)).

O